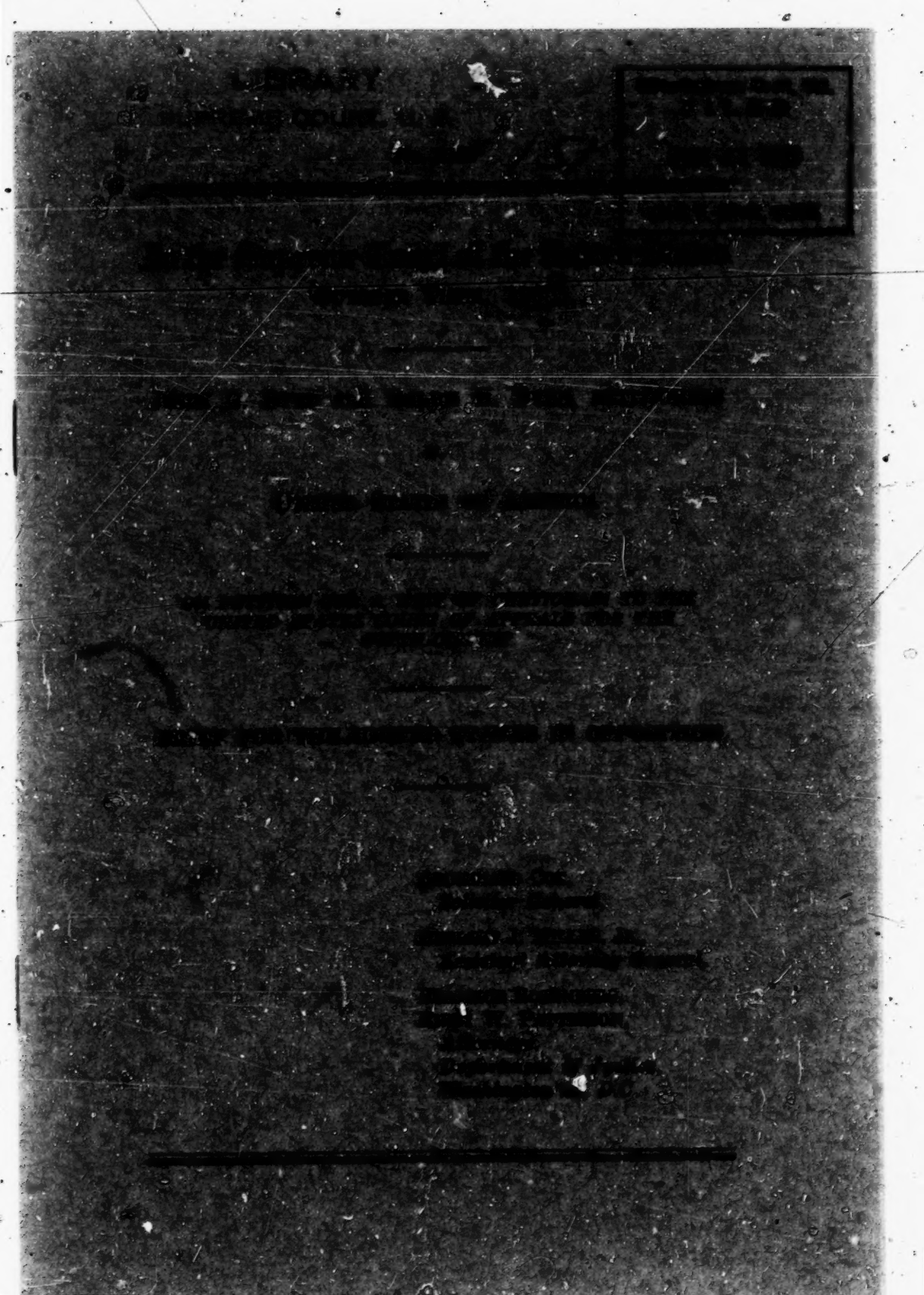

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1123

JOHN D. BYRD and RALPH H. BYRD, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 7-8) is reported at 314 F. 2d 336.

JURISDICTION

The judgment of the court of appeals was entered on March 6, 1963. A petition for a rehearing was denied on April 23, 1963. The petition for a writ of certiorari was filed on May 23, 1963. The juris-

diction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court unduly restricted examination of a defense witness as to a collateral matter.

STATEMENT

After a jury trial in the United States District Court for the Northern District of Georgia, petitioners were convicted on two substantive counts and on one count charging conspiracy to violate internal revenue statutes relative to distilled spirits. Each was sentenced to imprisonment for a period of four years (Tr. 1201-1203). The court of appeals affirmed, 314 F. 2d 336. The only question raised by the petition relates to the alleged restriction of the testimony of a defense witness, Alex Evans, as to a matter which had been referred to in the testimony of a government witness, Mrs. Louise Bradford.

Mrs. Bradford testified as to her complicity with petitioners and her deceased former husband, J. D. Beck, in the operation of three illicit stills in the State of Georgia. The first still was started in November 1957 and produced approximately 33,000 gallons of non-taxpaid liquor (Tr. 82, 214). The second was placed in operation in May 1958 and produced around 28,000 gallons (Tr. 96, 215). The third, started in April 1959, after her husband's death, produced about 19,000 gallons (Tr. 107-108, 215). Detailed testimony was given by this witness as to the participation of the two petitioners in acquiring

or leasing the land on which these stills were located, and in their subsequent operation (Tr. 81, 83, 84, 87, 96, 98, 100, 102, 107-108, 109, 113). She also testified as to her own part in these matters. She would take supplies to the stills (Tr. 83) and, when necessary, would advance money to the hired men, for which she was reimbursed by Ralph Byrd (Tr. 95-96, 106-107). She cooked and kept house for the hands and made purchases of groceries and supplies (Tr. 114). During her husband's lifetime, the net proceeds were divided equally between him and the two petitioners (Tr. 173). After his death, she continued the operation contributing to the expenses and agreeing to take one-third of the profits (Tr. 107-108, 115).

At the conclusion of her direct examination, Mrs. Bradford testified that a case was pending against her in Dawson County, which she believed was for manufacturing whiskey. She denied having any connection with this still, which she said belonged to her then husband and other individuals not connected with this case (Tr. 125).

On cross-examination it was brought out that she had been arrested for manufacturing and possessing liquor in November, 1959, by several officers including Mr. Evans, a federal officer, and that she did not appear for trial of the case (Tr. 128-129). She denied having ever seen this still, although, she said, the officers stated that it was behind her house (Tr. 130). She testified that she first called federal officers on Christmas eve in 1959 after a group (not including petitioners) had assaulted her husband, on

his instructions. (Tr. 132, 140-141, 154-159). She admitted signing a statement to the effect that she had paid protection money to Evans (the federal officer who participated in the 1959 arrest) when he was a state officer (Tr. 139).

Alex Evans testified on behalf of petitioners that in November 1959, when he was an investigator for the Treasury Department, he investigated a distillery in Dawson County located approximately 350 yards behind the house in which Mrs. Bradford was living. He said the traffic led right into her house and that there were four stills in operation (Tr. 701-702). When the witness was asked to describe the surroundings of the distillery the court said (Tr. 703):

> Now, he's gone into that. Now, we will not try that distillery case. He's gone into it. He said the workway led right into her yard.

Thereafter Evans said that a search of the garage revealed 84 gallons of non-taxpaid liquor locked up in the shed side of the garage and bales of sugar in a truck parked in the garage. (Tr. 703-704). The court cut off further questioning, again saying that it was not going to try the other case (Tr. 705).

ARGUMENT

The trial court permitted extensive cross examination of Mrs. Bradford on her testimony that the Dawson County distillery belonged to her husband and other persons and that she had no connection with it. Evans was allowed to testify that traffic to

it necessarily passed through her yard and that liquor and sugar were found in the garage. Having permitted Evans to give testimony which impeached Mrs. Bradford, the trial court acted well within its discretion in ruling that further questioning along this line be discontinued, as a full trial of the issues involved in that case was inappropriate to the determination of petitioners' guilt with respect to the three distilleries here involved. Cf. *Arpan* v. *United States*, 260 F. 2d 649 (C.A. 8); *Simon* v. *United States*, 123 F. 2d 80 (C.A. 4), certiorari denied, 314 U.S. 694; *Cwach* v. *United States*, 212 F. 2d 520 (C.A. 8); *United States* v. *Lawinski*, 195 F. 2d 1, 7 (C.A. 7). See, also, 3 Wigmore, *Evidence* (3d ed.), §§ 1000-1007.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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